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Crossing the line

It can come as a surprise to some homeowners: What they thought was their property really isn't. For those who are out of bounds, there may be financial consequences.

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WILL HAWLEY'S three-bedroom Palos Verdes Estates home has a picturesque 50-foot-deep garden in back shaded by a grove of giant eucalyptus trees and separated from a meandering forested trail by an unassuming wooden fence. The backyard has been a feature he's enjoyed since he bought the home in 1998.

But in October, Hawley attended a meeting of the Palos Verdes Estates City Council and returned home with bad news: About half of what he thought was his backyard is public land. And the city wants it back.

Like many of his neighbors, Hawley, 55, assumed his property extended to his fence. Why wouldn't he? Eighteen homes along the parkland trail behind his house share the same fence line. The fences, however, are all on city-owned parkland.

This type of encroachment -- a building, a structure or a portion of one, like a wall or fence, built on someone else's property -- is not uncommon and not always illegal. Authorized encroachments can include fences, fireplaces, hardscape (brickwork or concrete), walls, sheds, mailboxes, driveways and walkways.

Each city deals with the issue differently. Although Palos Verdes Estates homeowners stand to lose the private use of land they assumed they owned, Manhattan Beach is among cities that permit residents to build on and improve such areas.

No matter where you are looking to buy a home, experts say ordering a land survey or taking a close look at the preliminary title report before a sale can prevent a costly mistake.

Hawley estimated that he will have to spend several thousand dollars to remove and rebuild his fence and restore the land to city codes.

"If I had known that I would have to rip all this out when I bought it," Hawley said, "I would have sought some kind of financial adjustment to the purchase price."

In 31 years with the city of Los Angeles, Daniel Green, acting chief zoning administrator, hasn't seen a lot of unauthorized encroachments. When he does, Green said, lack of city enforcement or poor property surveys are usually the reason.

Now, give it back

No matter the explanation, if a portion of your property illegally encroaches on another's, be prepared to give that slice back.

The situation in Palos Verdes Estates suggests that few home buyers know encroachments exist or, if they do, check the legality of them when buying a home, said Vicki Longley, a real estate agent with Re/Max Palos Verdes Execs and an area resident who bought knowing her home encroached on city land.

Homeowners who must correct unauthorized encroachments can look to their title insurance for partial reimbursement, said Edward Beierle, vice president and counsel for Pasadena-based LandAmerica Financial Group Inc. Some policies include protection against unauthorized encroachments that are not on record during the sale and will reimburse owners, less a deductible, for related expenses.

Palos Verdes Estates owners have five years from city notification of an encroachment or 30 days from transfer of ownership to remove any unauthorized structures, such as fences, on city-owned land at their own expense. Those who don't comply risk liens on their properties and fines of up to \$500 per day.

With illegal structures and fences gone, the previously enclosed trees, plants and land will become part of the open space along the trail, said Allan Rigg, Palos Verdes Estates' director of planning and public works.

Unlike Hawley, Longley, 52, knew her fence enclosed about 30 feet of public land when she bought her house in 1995. "The seller told me," she said.

Rightly so. Laws require sellers to disclose problems before a sale, but Longley points out that a seller can only reveal what he or she knows.

The two-mile trail behind Hawley's home was set aside as an intended right-of-way for Pacific Electric Railway's Red Car trolleys in the 1920s. The land, never utilized, was deeded to the city by the Palos Verdes Homes Assn. for public use soon after the city incorporated in 1939.

Even longtime residents have been caught by surprise. Neil Olsen said the same city that gave him a permit and inspected the paddle-tennis sports court he

installed on the deepest part of his property in 1975 recently sent him a letter saying that his property illegally encroaches on Palos Verdes Estates parkland by 11 feet. When asked about the seeming discrepancy, city official Rigg declined to comment.

Rigg did say that the City Council became focused on cleaning up the parklands last year, and "this was a logical step in maximizing the usability of the parklands."

"Even if we wanted to, we couldn't give these people the land," Rigg said, due to the deed restrictions. "We have a large public who is entitled to use these open spaces also."

Stephen Paterson, 42, is one resident who thinks the city plan to return the land to public use is fair.

Paterson, whose home overlooks the same trail, got a land survey when he and his wife, Julie, bought his 3,400-square-foot, five-bedroom home in 2003. The survey showed an unauthorized encroachment extending about 30 feet beyond the actual property line.

"We decided to put our fence right on our side of the property line," he said. "It wasn't a big deal."

For Hawley and others, though, it's not that simple.

"It goes without saying that all of us are going to take some kind of value loss," he said.

One city's solution

Although homeowners are frequently on the losing end of an encroachment issue, Manhattan Beach has found a compromise on residential use of city-owned land.

Bob Holmes' corner lot faces the ocean and is bounded by a "walk-street" -- a broad concrete pathway of city-owned property that allows pedestrian traffic to access the beach and has sidewalk-size portions of land running along either side. Without a need for that additional sidewalk space, Manhattan Beach has allowed owners with properties adjacent to the walk-streets to apply to use the land.

After paying a one-time city fee of \$176, homeowners can get creative. And they have, developing a colorful landscape mixed with paved patio areas, planter-filled retaining walls, decks, lawns and decorative gardens.

City standards do, however, prohibit unwanted improvements such as hot tubs or walls more than 42 inches tall.

Holmes' 12-foot city-owned sideyard features a gated entrance, a walled patio area with planters punctuated by decorative brickwork, flowers, a sprinkler system and night lighting.

The city's goal is to preserve the view corridor along the street without disrupting access to city services.

David Caskey, a broker with Shorewood Realtors in Manhattan Beach, said a corner lot on a Strand walk-street with the option of an encroachment permit could sell for 15% to 20% more than an interior lot. "It can be a real advantage," Caskey said.

Manhattan Beach has found a solution to residential use of city property, but some municipalities have been known to let go of the land completely.

While conducting a real estate appraisal for a bank in 2002, Bryan Riggs, president of Riggs & Riggs Inc. real estate appraisers and consultants in Simi Valley, noticed that the loan applicant, a local church, had built an additional facility with parking adjacent to the county flood channel that used about 600 square feet of public property. Riggs alerted the bank and the church to the problem. The city, county and proper municipalities worked to redraw the plot lines and deed the land to the church. The price tag? The cost of administering the paperwork, which was less than \$500.

"This was a case where it has worked out favorably, but that doesn't always happen," Riggs explained.

"It can go good, it can go bad," he said. "But ultimately, taking a trip to the city, getting title reports and surveys gives people the tools to make sure they are not making a huge mistake."